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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 OTILIA H., an Individual,

12 Plaintiff,

13 v.

14 ANDREW M. SAUL, Commissioner of
15 Social Security,

16 Defendant.

Case No.: 2:18-09181 ADS

MEMORANDUM OPINION AND ORDER

17 **I. INTRODUCTION**

18 Plaintiff Otilia H.¹ (“Plaintiff”) challenges the Defendant Andrew M. Saul²,
19 Commissioner of Social Security’s (hereinafter “Commissioner” or “Defendant”) denial
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21 ¹ Plaintiff’s name has been partially redacted in compliance with Federal Rule of Civil
22 Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court
Administration and Case Management of the Judicial Conference of the United States.

23 ² The Complaint, and thus the docket caption, do not name the Commissioner. The
24 parties list Nancy A. Berryhill as the Acting Commissioner in the Joint Submission. On
June 17, 2019, Saul became the Commissioner of Social Security. Thus, he is
automatically substituted as the defendant under Federal Rule of Civil Procedure 25(d).

1 of her application for a period of disability and disability insurance benefits (“DIB”).
2 Plaintiff contends that the Administrative Law Judge (“ALJ”) improperly rejected the
3 opinion of the consultative psychologist. For the reasons stated below, the decision of
4 the Commissioner is affirmed, and this matter is dismissed with prejudice.

5 **II. PROCEEDINGS BELOW**

6 **A. Procedural History**

7 Plaintiff protectively filed her application for DIB on July 30, 2015, alleging
8 disability beginning April 22, 2015. (Administrative Record “AR” 137-38). Plaintiff’s
9 claims were denied initially December 10, 2015 (AR 53), and upon reconsideration on
10 February 24, 2016 (AR 88-92). A hearing was held before ALJ Mary L. Everstine on
11 July 31, 2017. (AR 38-52). Plaintiff, represented by counsel, appeared and testified,
12 through a Spanish interpreter, at the hearing, as did a vocational expert, Kelly Bartlett.
13 (Id.)

14 On November 16, 2017, the ALJ found that Plaintiff was “not disabled” within the
15 meaning of the Social Security Act.³ (AR 18-37). The ALJ’s decision became the
16 Commissioner’s final decision when the Appeals Council denied Plaintiff’s request for
17 review on August 24, 2018. (AR 1-9). Plaintiff then filed this action in District Court on
18 October 25, 2018, challenging the ALJ’s decision. [Docket (“Dkt.”) No. 1].
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23 ³ Persons are “disabled” for purposes of receiving Social Security benefits if they are
24 unable to engage in any substantial gainful activity owing to a physical or mental
impairment expected to result in death, or which has lasted or is expected to last for a
continuous period of at least 12 months. 42 U.S.C. §423(d)(1)(A).

1 On April 8, 2019, Defendant filed an Answer, as well as a copy of the Certified
2 Administrative Record. [Dkt. Nos. 16, 17]. The parties filed a Joint Stipulation on July
3 8, 2019. [Dkt. No. 18]. The case is ready for decision.⁴

4 **B. Summary of ALJ Decision After Hearing**

5 In the decision (AR 24-34), the ALJ followed the required five-step sequential
6 evaluation process to assess whether Plaintiff was disabled under the Social Security
7 Act.⁵ 20 C.F.R. § 404.1520(a). At **step one**, the ALJ found that Plaintiff had not been
8 engaged in substantial gainful activity since April 22, 2015, the alleged onset date. (AR
9 26). At **step two**, the ALJ found that Plaintiff had the following severe impairments:
10 (a) history of excision of left acoustic neuroma with cranioplasty in September 2006
11 with left ear hearing loss; (b) intermittent vertigo; (c) headaches; and (d) dysthymic
12 disorder. (AR 26). At **step three**, the ALJ found that Plaintiff “does not have an
13 impairment or combination of impairments that meets or medically equals the severity
14 of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR
15 404.1520(d), 404.1525, 404.1526).” (AR 26).

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17 ⁴ The parties filed consents to proceed before the undersigned United States Magistrate
18 Judge, pursuant to 28 U.S.C. § 636(c), including for entry of final Judgment. [Dkt. Nos.
19 9, 10].

20 ⁵ The ALJ follows a five-step sequential evaluation process to assess whether a claimant
21 is disabled: Step one: Is the claimant engaging in substantial gainful activity? If so, the
22 claimant is found not disabled. If not, proceed to step two. Step two: Does the claimant
23 have a “severe” impairment? If so, proceed to step three. If not, then a finding of not
24 disabled is appropriate. Step three: Does the claimant’s impairment or combination of
impairments meet or equal an impairment listed in 20 C.F.R., Pt. 404, Subpt. P, App. 1?
If so, the claimant is automatically determined disabled. If not, proceed to step four.
Step four: Is the claimant capable of performing his past work? If so, the claimant is not
disabled. If not, proceed to step five. Step five: Does the claimant have the residual
functional capacity to perform any other work? If so, the claimant is not disabled. If
not, the claimant is disabled. Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995)
(citing 20 C.F.R. §404.1520).

1 The ALJ then found that Plaintiff had the Residual Functional Capacity (“RFC”)⁶
2 to perform light work as defined in 20 C.F.R. § 404.1567(b),⁷ except:

3 no work at unprotected heights or operating hazardous machinery; no
4 work requiring bilateral hearing; no loud background noises without use
of ear protection; and no greater than simple routine tasks.

5 (AR 28).

6 At **step four**, based on Plaintiff’s RFC and the vocational expert’s testimony, the
7 ALJ found that Plaintiff is capable of performing her past relevant work as a
8 packager/sorter. “This work does not require the performance of work-related activities
9 precluded by the [Plaintiff’s] residual functional capacity (20 CFR 404.1565).” (AR 33-
10 34). With this finding, the ALJ did not proceed to **step five**. Accordingly, the ALJ
11 determined that Plaintiff had not been under a disability, as defined in the Social
12 Security Act, from April 22, 2015, through the date of the decision, November 16, 2017.
13 (AR 34).

17 ⁶ An RFC is what a claimant can still do despite existing exertional and nonexertional
18 limitations. See 20 C.F.R. § 404.1545(a)(1).

19 ⁷ “Light work” is defined as
20 lifting no more than 20 pounds at a time with frequent lifting or carrying
of objects weighing up to 10 pounds. Even though the weight lifted may be
21 very little, a job is in this category when it requires a good deal of walking
and pulling of arm or leg controls. To be considered capable of performing
22 a full or wide range of light work, you must have the ability to do
substantially all of these activities.

23 20 C.F.R. § 404.1567(b); see also Rendon G. v. Berryhill, 2019 WL 2006688, at *3 n.6
(C.D. Cal. May 7, 2019).

1 **III. ANALYSIS**

2 **A. Issue on Appeal**

3 Plaintiff raises one issue for review: whether the ALJ failed to provide specific
4 and legitimate reasons to reject the opinion of the consultative psychologist? [Dkt. No.
5 18, Joint Stipulation, p. 4].

6 **B. Standard of Review**

7 A United States District Court may review the Commissioner's decision to deny
8 benefits pursuant to 42 U.S.C. § 405(g). The District Court is not a trier of the facts but
9 is confined to ascertaining by the record before it if the Commissioner's decision is
10 based upon substantial evidence. Garrison v. Colvin, 759 F.3d 995, 1010 (9th Cir. 2014)
11 (District Court's review is limited to only grounds relied upon by ALJ) (citing Connett v.
12 Barnhart, 340 F.3d 871, 874 (9th Cir. 2003)). A court must affirm an ALJ's findings of
13 fact if they are supported by substantial evidence and if the proper legal standards were
14 applied. Mayes v. Massanari, 276 F.3d 453, 458-59 (9th Cir. 2001). An ALJ can satisfy
15 the substantial evidence requirement "by setting out a detailed and thorough summary
16 of the facts and conflicting clinical evidence, stating his interpretation thereof, and
17 making findings." Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998) (citation
18 omitted).

19 "[T]he Commissioner's decision cannot be affirmed simply by isolating a specific
20 quantum of supporting evidence. Rather, a court must consider the record as a whole,
21 weighing both evidence that supports and evidence that detracts from the Secretary's
22 conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citations and
23 internal quotation marks omitted). "Where evidence is susceptible to more than one
24 rational interpretation,' the ALJ's decision should be upheld." Ryan v. Comm'r of Soc.

1 Sec., 528 F.3d 1194, 1198 (9th Cir. 2008) (citing Burch v. Barnhart, 400 F.3d 676, 679
2 (9th Cir. 2005)); see Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) (“If
3 the evidence can support either affirming or reversing the ALJ’s conclusion, we may not
4 substitute our judgment for that of the ALJ.”). However, the Court may review only “the
5 reasons provided by the ALJ in the disability determination and may not affirm the ALJ
6 on a ground upon which he did not rely.” Orn v. Astrue, 495 F.3d 625, 630 (9th Cir.
7 2007) (citation omitted).

8 Error in a social security determination is subject to harmless error analysis.
9 Ludwig v. Astrue, 681 F.3d 1047, 1054 (9th Cir. 2012). Error is harmless if “it is
10 inconsequential to the ultimate nondisability determination” or, despite the legal error,
11 “the agency’s path may reasonably be discerned.” Treichler v. Comm’r of Soc. Sec.
12 Admin., 775 F.3d 1090, 1099 (9th Cir. 2014).

13 **C. The ALJ Properly Evaluated The Medical Evidence**

14 Plaintiff contends that the ALJ erred in rejecting the moderate limitations
15 assessed by the consultative psychological examiner, Kara Cross, Ph.D. Defendant
16 argues that the ALJ gave proper weight to Dr. Cross’ opinion.

17 **1. Standard for Weighing Medical Opinions**

18 The ALJ must consider all medical opinion evidence. 20 C.F. R. § 404.1527(b).
19 “As a general rule, more weight should be given to the opinion of a treating source than
20 to the opinion of doctors who do not treat the claimant.” Lester v. Chater, 81 F.3d 821,
21 830 (9th Cir. 1995) (citing Winans v. Bowen, 853 F.2d 643, 647 (9th Cir. 1987)). Where
22 the treating doctor’s opinion is not contradicted by another doctor, it may only be
23 rejected for “clear and convincing” reasons. Id. (citing Bayliss v. Barnhart, 427 F.3d
24 1211, 1216 (9th Cir. 2005)). “If a treating or examining doctor’s opinion is contradicted

1 by another doctor's opinion, an ALJ may only reject it by providing specific and
2 legitimate reasons that are supported by substantial evidence." Trevizo v. Berryhill, 871
3 F.3d 664, 675 (9th Cir. 2017) (quoting Bayliss, 427 F.3d at 1216).

4 "Substantial evidence" means more than a mere scintilla, but less than a
5 preponderance; it is such relevant evidence as a reasonable person might accept as
6 adequate to support a conclusion." Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir.
7 2007) (citing Robbins, 466 F.3d at 882). "The ALJ can meet this burden by setting out a
8 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
9 interpretation thereof, and making findings." Magallanes v. Bowen, 881 F.2d 747, 751
10 (9th Cir. 1989) (citation omitted); see also Tommasetti v. Astrue, 533 F.3d 1035, 1041
11 (9th Cir. 2008) (finding ALJ had properly disregarded a treating physician's opinion by
12 setting forth specific and legitimate reasons for rejecting the physician's opinion that
13 were supported by the entire record).

14 As noted above, an RFC is what a claimant can still do despite existing exertional
15 and nonexertional limitations. See 20 C.F.R. §§ 404.1545(a)(1). Only the ALJ is
16 responsible for assessing a claimant's RFC. See 20 C.F.R. § 404.1546(c). "It is clear that
17 it is the responsibility of the ALJ, not the claimant's physician, to determine residual
18 functional capacity." Vertigan v. Halter, 260 F.3d 1044, 1049 (9th Cir. 2001) (citing 20
19 C.F.R. § 404.1545).

20 2. The Psychological Evaluation At Issue

21 On October 24, 2015, Dr. Cross performed a Comprehensive Psychological
22 Evaluation/Complete Mental Status Evaluation of Plaintiff, at the request of the agency,
23 and submitted a seven-page written summary of evaluation. (AR 282-88). The
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1 prognosis assessed by Dr. Cross states: "From the psychiatric standpoint, the claimant's
2 condition is deemed FAIR." (AR 287).

3 In the Functional Assessment section of Dr. Cross' report, she gave the following
4 opinions of Plaintiff:

5 Dr. Cross assessed that Plaintiff had "No Limitations" in (1) Ability to
6 understand safety rules and regulations and to maintain safety on the
7 job; (2) Ability to accept instructions from supervisors; and (3) Ability
8 to perform work activities without special or additional supervision.

9 Dr. Cross assessed that Plaintiff was "Not Significantly Limited" in
10 (1) Ability to understand, remember and carry out simple one or two
11 step task instructions; (2) Ability to do detailed and complex tasks;
12 (3) Ability to associate day to day work activity; and (4) Ability to relate
13 to co-workers and the public in an appropriate manner.

14 Dr. Cross assessed that Plaintiff was "Moderately Limited" in (1) Ability
15 to understand, remember, carry out simple one or two step job
16 instructions over an 8 hour day 40 hour work week without emotionally
17 decompensating; (2) Ability to do detail and complex tasks over an 8
18 hour day 40 hour work week without emotionally decompensating;
19 (3) Ability to maintain concentration and attention; (4) Ability to
20 maintain reasonable persistence and pace; and (5) Ability to maintain
21 regular attendance in the work place and perform activities on a
22 consistent basis.

23 (AR 287-88).

24 Plaintiff argues that the ALJ failed to provide specific and legitimate reasons to
reject the moderate limitations assessed by Dr. Cross. [Dkt. No. 18, p. 4].

3. The ALJ Gave Proper Weight to the Medical Opinion

As set forth above, the ALJ found that Plaintiff had the RFC to perform light work
with certain exceptions, including "no greater than simple routine tasks." (AR 28). In
support of this RFC, the ALJ gave persuasive weight to the opinion of Dr. Cross, stating:

Persuasive weight is given to the opinion by the psychological CE at [AR
282-88], based on supportability with medical signs and objective
findings, consistency with the record, and area of specialization. As

1 noted above, the claimant reported a minimal history of mental health
2 treatment, naming a Dr. Montes as her psychologist although the
3 medical record fails to provide documentation of treatment by Dr.
4 Montes. She had a generally normal mental status exam, presenting as
5 cooperative, open, friendly and although she exaggerated her
6 complaints, she did not show evidence of manipulation. She had
7 normal thought processes, denied any auditory or visual hallucinations,
8 had normal speech, normal orientation to person, place, time and
9 purpose, had normal memory, adequate fund of knowledge, normal
10 concentration and calculation, and normal judgment and reasoning.
11 Although she had dysthymic mood, her affect was congruent with
12 mood. The claimant reported engaging in activities of daily living of
13 running errands, shopping, performing household chores, going for
14 short walks, paying bills, managing money, maintaining “good
15 relationships” with family and friends. On a daily basis, the claimant
16 was capable of bathing, dressing, picking up after herself, sweeping,
17 vacuuming, folding the laundry, cooking, using a microwave oven,
18 listening to the radio, using a cell phone, using a landline phone,
19 reading, calling friends, and having family visit her. Thus, based on the
20 claimant’s activities, a normal mental status exam, and general lack of
21 psychological abnormalities, the opinion by the psychological CE that
22 the claimant was not significantly limited in performing simple
23 repetitive tasks despite dysthymic disorder is given persuasive weight.

(AR 32).

14 Accordingly, contrary to Plaintiff’s arguments, the ALJ did not reject any of the
15 limitations assessed by Dr. Cross. Nor did the ALJ simply ignore the “moderate
16 limitations” as Plaintiff also argues. Rather, the ALJ did a detailed review of the
17 findings and assessments of Dr. Cross in the decision.⁸

20 ⁸ In analyzing and holding at step three that Plaintiff does not have an impairment or
21 combination of impairments that meets a listed impairment, the ALJ considered
22 whether the “paragraph B” criteria were satisfied. In finding that the criteria were not
23 satisfied, the ALJ thoroughly reviewed many of the “mild” and “moderate” limitation
24 findings of Dr. Cross. (AR 26-28). The ALJ also stated at the conclusion of this section
that Plaintiff’s assessed RFC “reflects the degree of limitation the undersigned has found
in the ‘paragraph B’ mental functional analysis.” (AR 28). Thus, the ALJ did not ignore
the moderate limitations as Plaintiff argues; rather, the ALJ explicitly stated the
limitations are reflected in the assessed RFC.

1 Plaintiff would like for this Court to reverse and remand so that the ALJ can
2 expressly state the weight that should be given to the “moderate limitations” assessed in
3 Dr. Cross’ report.⁹ There is no reason why this case needs to be remanded for this sole
4 purpose when it is clear that the ALJ considered the entirety of Dr. Cross’ report in
5 giving it persuasive weight and assessing an RFC with “no greater than simple routine
6 tasks.” See Ford v. Saul, No. 18-35794, 2020 WL 829864, at *9 (9th Cir. Feb. 20, 2020)
7 (“An ALJ’s duty to develop the record further is triggered only when there is ambiguous
8 evidence or when the record is inadequate to allow for proper evaluation of the
9 evidence.”) (quoting Mayes v. Massanari, 276 F.3d 453, 459-60 (9th Cir. 2001)); Stubbs-
10 Danielson v. Astrue, 539 F.3d 1169, 1174 (9th Cir. 2008) (“[A]n ALJ’s assessment of a
11 claimant adequately captures restrictions related to concentration, persistence, or pace
12 where the assessment is consistent with restrictions identified in the medical
13 testimony.”). Moreover, Plaintiff has not explained how any of her mental limitations
14 are sufficiently restrictive to ultimately preclude her from performing work. See, e.g.,
15 Hoopai v. Astrue, 499 F.3d 1071, 1077 (9th Cir. 2007) (explaining the Ninth Circuit has
16 not “held mild or moderate depression to be a sufficiently severe non-exertional
17 limitation that significantly limits a claimant’s ability to do work beyond the exertional
18 limitation”); Ball v. Colvin, 2015 WL 2345652, at *3 (C.D. Cal. May 15, 2015) (“As the
19 ALJ found that Plaintiff’s mental impairments were minimal, the ALJ was not required
20 to include them in Plaintiff’s RFC.”); Sisco v. Colvin, 2014 WL 2859187, at *7-8 (N.D.

22 ⁹ Plaintiff rather shockingly changes Dr. Cross’ assessed limitations from “moderate” to
23 “significant” in the reply section of the Joint Stipulation. [Dkt. No. 18, pp. 10-12]. The
24 assessed limitations at issue are only referred to as “moderate” by Dr. Cross and it is
disingenuous to argue that they are of any more significance than that specifically stated
by the examining consultant.

1 Cal. June 20, 2014) (ALJ not required to include in RFC assessment mental impairment
2 that imposed “no significant functional limitations”). Here, Dr. Cross simply assessed
3 some “moderate” limitations in deeming Plaintiff’s condition “fair.” (AR 287). See
4 Shapiro v. Berryhill, 2020 WL 836830, at *6 (D. Nev. Feb. 20, 2020) (concluding that
5 the ALJ properly translated claimant’s mental impairment into an RFC that accounted
6 for moderate limitations).

7 Furthermore, it is the role of the ALJ, and not this Court, to interpret and
8 resolve any ambiguities in the medical records. See Tommasetti, 533 F.3d at 1041-42
9 (“The ALJ is the final arbiter with respect to resolving ambiguities in the medical
10 evidence.”); Andrews v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (holding that it is the
11 ALJ’s job to resolve any conflicts). See Ryan v. Comm’r of Soc. Sec., 528 F.3d 1194, 1198
12 (9th Cir. 2008) (“Where evidence is susceptible to more than one rational
13 interpretation,’ the ALJ’s decision should be upheld.”) (citation omitted); Robbins v.
14 Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006) (“If the evidence can support either
15 affirming or reversing the ALJ’s conclusion, we may not substitute our judgment for that
16 of the ALJ.”) There is no reason why this case needs to be remanded for the sole
17 purpose of having the ALJ expressly state how she incorporated Dr. Cross’ assessed
18 moderate limitations into the RFC. Indeed, an ALJ is not obligated to discuss “every
19 piece of evidence” when interpreting the evidence and developing the record. See
20 Howard ex rel. Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003) (citation omitted).
21 Similarly, an ALJ is also not obligated to discuss every word of a doctor’s opinion or
22 include limitations not actually assessed by the doctor. See Fox v. Berryhill, 2017 WL
23 3197215, *5 (C.D. Cal. July 27, 2017); Howard, 341 F.3d at 1012.

1 Finally, as the ALJ's assessed RFC aligns with Dr. Cross' opinion by limiting
2 Plaintiff to light work with no greater than simple routine tasks, any failure of the ALJ to
3 address the moderate limitations would be harmless. See Treichler v. Comm'r of Soc.
4 Sec. Admin., 775 F.3d 1090, 1099 (9th Cir. 2014) (Error is harmless if "it is
5 inconsequential to the ultimate nondisability determination" or, despite the legal error,
6 "the agency's path may reasonably be discerned.")

7 **IV. CONCLUSION**

8 For the reasons stated above, the decision of the Social Security Commissioner is
9 AFFIRMED, and the action is DISMISSED with prejudice. Judgment shall be entered
10 accordingly.

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12 DATE: March 17, 2020

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14 /s/ Autumn D. Spaeth
15 THE HONORABLE AUTUMN D. SPAETH
16 United States Magistrate Judge
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